

# Exhibit 2

MARCH 30, 2016 | BY VERA RANIERI

## Patent Lawsuits Should Not Be Shrouded in Secrecy

### EFF Moves To Unseal Important Rulings Regarding Repeat Litigant Blue Spike

The public has a First Amendment right to access court records, and that right is generally only curtailed when there is “good cause” to do so. Unfortunately, when it comes to patent cases, courts routinely allow [PDF] parties to file entire documents under seal, without any public-redacted version being made available.

That’s why EFF, with the assistance of Durie Tangri, has filed a motion [PDF] to intervene and unseal documents in a patent case, Blue Spike v. Audible Magic. The court has allowed the parties in this case to keep more than half of the docket under seal, including *the court’s own rulings*, making it impossible to fully understand and evaluate both the parties’ arguments and the court’s decisions. As we explain in our filing, this degree of sealing is improper, especially in light of the public’s interest in the case.

Blue Spike is a repeat patent litigation player. Lex Machina (a service that collects patent litigation filings from across the country) indicates there are over 100 lawsuits involving Blue Spike and its patents. Unsurprisingly then, Blue Spike’s campaign has garnered press attention. We’ve written about Blue Spike and its patents in connection with our “Stupid Patent of the Month” series. Others have written about Blue Spike too.

Blue Spike claims to own patents relating to “forensic watermarking, signal abstracts, data security, software watermarks, product license keys, ASLR, deep packet inspection, [and] license code for authorized software to bandwidth securitization.” It maintains a website that implies that it makes and sells products that practice the patents.

But the transcript [PDF] of the hearing on the parties’ various motions filed in the case (one of the few public documents available) raises serious questions about both the scope of Blue Spike’s patents and its claims to be an operating company that actually practices its patents. From the transcript, it appears that Blue Spike owner and inventor Scott Moskowitz made statements under oath that limited the scope of the patents. The transcript also suggests that Blue Spike did not write a single line of code for one of the products it purportedly marketed. But we can’t tell for sure without the underlying documents. The public’s incomplete picture of the hearing and the documents that led up to it creates uncertainty for anyone wishing to avoid a Blue Spike lawsuit.

This case is just one example of excessive secrecy in patent cases. Parties in patent litigation—both plaintiffs and defendants—seal entire docket entries to an alarming degree. This prevents the public from understanding how patents are being enforced and how our judicial system is deciding important questions of infringement and invalidity.

To its credit, when we contacted Audible Magic to ask them to file public-redacted versions of docket entries, they agreed to do so (although they haven’t done so yet). Blue Spike, however, refused, meaning if the public wants to know more, we (or anyone else) would have to go through the time-consuming and expensive process of moving to intervene.

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